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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,413	03/13/2001	Randal Lee Bertram	RAL920000116US1	1980
47052	7590	02/20/2007		
SAWYER LAW GROUP LLP PO BOX 51418 PALO ALTO, CA 94303			EXAMINER SWEARINGEN, JEFFREY R	
			ART UNIT 2145	PAPER NUMBER
			MAIL DATE 02/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/805,413

Applicant(s)

BERTRAM ET AL.

Examiner

Jeffrey R. Swearingen

Art Unit

2145

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: \_\_\_\_\_.

  
JASON CARDONE  
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Applicant's amendment to the specification is considered new matter. The examiner made three separate attempts to contact Applicant's representative to discuss and clarify this issue before the mailing of this Advisory Action. Applicant's representative should contact the examiner directly by telephone at their earliest convenience if this issue is unclear from this Advisory Action and to discuss possible amendments to the claim language.

Current Office policy now states that amendments to the specification removing the signal media constitute intent and raise the issue of new matter within the specification. The proper way to handle this portion of the specification is to define computer readable medium to encompass a storage medium and a transmission medium, since Applicant chose to broadly define computer readable medium in the originally filed application. Applicant should then amend the claims to read only upon a computer readable storage medium.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive.

A "latent" and "future" bottleneck are both relative terms, and are therefore indefinite. No standard exists to state when latency and future can be met, and no metes and bounds are given by either the claims or the specification to measure these two terms. Applicant's representative is welcome to discuss possible claim language to overcome these rejections with the Examiner, and is invited to do so.

As stated previously, the rejections to claims 5 and 10 under 35 USC 112 have been overcome.

Applicant's traversal of the rejection of Prakash is based upon the alleged lack of a "latent bottleneck" in the Prakash reference. Applicant fails to recognize that Applicant's specification does not give a clear definition stating the metes and bounds of a "latent bottleneck". Applicant failed to give a clear definition of a latent bottleneck, and therefore the Office was forced to broadly interpret latent bottleneck.

Applicant's arguments concerning Prakash are unclear. Applicant "a latent bottleneck is, by definition, a bottleneck that is currently not in existence" on page 12, lines 4-5 of the remarks of 1/22/2007. From this, it is unclear if Applicant is arguing that Prakash considers a latent bottleneck which does not exist. If something does not exist, then Applicant should explain the logical fallacy on determining whether something exists when Applicant has admitted that it does not exist.

Applicant's proposed amendments have changed the scope of the claims, thus requiring further consideration.